Supreme Court, U.S.
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OFFICE OF THE CLERK

No. 1

IN THE

SUPREME COURT OF THE UNITED STATES

D.T.B., a minor ehild, by his next friend,
DANIEL J. O'CALLAGHAN, and
DANIEL J. O'CALLAGHAN, *Pro Se*, on his own behalf,

Petitioners,

v.

HON. JOHN J. FARMER, JR., in past or present official capacity as Attorney General of the State of New Jersey; HON. JOHN J. HARPER, in his past or present official capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; ANN T. SCUCCI; MATHIAS R. HAGOVSKY; and DAVID F. SALVAGGIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITON FOR A WRIT OF CERTIORARI

Daniel J. O'Callaghan
Petitioner Pro Se and
Counsel of Record and
Attorney for Petitioner DTB
c/o Daniel J. O'Callaghan, Esq.
7 Dey Street, Suite 700
New York, New York 10007
(212) 222-4200

Questions Presented for Review

1. Does not the State's segregation of a child of unmarried parents and the father of such child for treatment different and unequal to child(ren) of married parents and such parent(s) violate the Equal Protection Clause. Has not the State failed the *heightened scrutiny* standard?

2. Has not the State failed to observe this Court's precedents which identify an unmarried father's 42 U.S.C. §§ 1983 and 1985(3) due process/ equal protection rights concerning association (*parentage and visitation*) with his child and the child's Constitutional protections?

3. Is not the *Rooker-Feldman* bar repeatedly advanced invalid as there has not occurred any "*final decision*" nor any decision on the merits at any time?

4. Is not the *Rooker-Feldman* bar repeatedly advanced invalid as "*dismissal as a sanction*" determined by Circuit precedent as not such bar, nonetheless such precedent repeatedly omitted by the District and Circuit courts?

5. Does not the State's use of illegal and unexamined evidence from a fake psychologist – statutorily prohibited concerning a child of married parents and such parents -- to position a severance/ termination of association (*visitation*) for 6 years between a previously always-involved loving father and his only child violate due process and equal protection?

6. Does not the State's "*10 a.m. – 6 p.m.*" New York City – mid-New Jersey twice monthly Saturday or Sunday "*visitation*" for 2 years upon counsel's "*They're not married, they're not married*" and concocted contentions from a fake, partial, and unexamined "psychologist" violate due process and equal protection?

7. Does not immunity fail for a person who claims this special treatment but who fails in all performance?

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In The

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D.T.B., a minor child, by his next friend
DANIEL J. O'CALLAGHAN, and
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HON. JOHN J. FARMER, *et al.*

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

The opinion of the United States District Court for the District of New Jersey is not officially reported and is dated September 12, 2005, and appears in Appendix A at 1a. A prior *Petition for Certiorari*, No. 04-992 which was filed in January, 2005, and denied in June, 2005, included in an Appendix earlier Federal orders/ opinions – all of which essentially were grounded upon *Rooker-Feldman.*

The Clerk has advised that the *Appendix herein* need not again contain said earlier *Appendix* materials. Respectfully, to the extent appropriate, Petitioners incorporate said prior *Petition for Certiorari* and *Appendix* in *04-992* as if reproduced in full herein.

The opinion and judgment of the Court of Appeals for the Third Circuit which affirmed are not officially reported, are dated June 29, 2006, and appear in App C and D at 3a-8a. The decision upon sur petition for rehearing of the Court of

Appeals for the Third Circuit which denied the petition for rehearing en banc is not officially reported, is dated July 25, 2006, and appears at App E at 9a.

JURISDICTION

The order of the District Court which denied FRCP R. 60 (b) relief is dated September 12, 2005. The earlier opinion of the Court of Appeals for the Third Circuit which earlier affirmed on *Rooker-Feldman* is not officially reported, is dated September 14, 2004, and appears at App F at 11a.

Subject matter jurisdiction in the District Court was grounded upon 28 U.S.C. § 1331. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTORY AND RULE PROVISIONS

These provisions are involved: 42 U.S.C. § 1983 and 1985 (3) and Federal Rules of Civil Procedure ("FRCP") Rules 12 (b), 56 and 60 (b) and the New Jersey Parentage Act, New Jersey Family Therapist Privilege, and New Jersey Family Court Rules

STATEMENT OF THE CASE

This case arises out of a N.J. family court case conducted since June, 2000, before the Hon. John J. Harper ("**Judge Harper**") and since November, 2001, before 3 other Morristown, NJ, judges. This case relates to the *Parentage Act* and children of unmarried parents.[1] The plaintiff-father's family court complaint presented claims for "*paternity and*

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[1] N.J. Parentage Act, establishes a "*parent and child relationship*" "*...includes ... father and child relationship*" and "*extends equally to every child and to every parent, regardless of the marital status of the parents*"; *Closed court ... See Appendix to 04-992 at App I.*

visitation".[2] The State's "*non-dissolution*" ("*FD*") category for child/ children of unmarried parents omits any "track system", instead, *summary* support orders.[3] On August 24, 2000. Judge Harper used a defendant-mother's counsel's submission of a false letter from **Lofas**, a fake "Ph.D." with multiple "associates" in N.J. ("**Stepfamily**" website) to extinguish a father's relationship with his then 8-year-old son. This occurred, solely in consequence of counsel's **Salvaggio**'s submission of a Lofas letter:[4]

> ... *I am a psychologist and have seen ... [the mother, child and father] .... I do not believe that it is in ... [DTB]'s best interest to be forced to sleep overnight at his father's house at this time. .... It seems that ... [DTB] and his father have a good relationship. .... signed, [Lofas], Ph.D.*

Adverse contentions – false and unexamined -- were accepted

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[2] For 6 months before and 2 years after the child's June 19, 1992, NYC birth, the parents resided together. Subsequent to 8 years of uninterrupted, substantial continuity of relationship between father and child, in early May, 2000, absent all cause or justification, the mother prevented all relationship between father and child. In consequence, the father filed a complaint for "*paternity and visitation*" in June, 2000.

[3] *See generally, Popovich v. Cuyahoga County Court*, 276 F.3rd 808 (6th Cir. 2002) (*en banc*):

> *[P]laintiff's due process interest is significant in that the judicial proceeding will determine the amount of time, if any, he can spend with his ... [child]. ... The Supreme Court has recognized the special nature of parental rights and has ... imposed special due process guarantees so that states may not lightly terminate parents' relationships with their children.*"(emphasis added).

[4] Lofas misrepresented "*Ph.D*", "*Dr.*", and "*I am a psychologist*". Salvaggio presented Lofas's "resume" which included a fake "*Ph.D*" credential and website "*...44,000 hits/ month*". Submissions were in violation of NJ's "*Family Therapist Privilege*". R. 510. Nonetheless, immediately – and for years -- Judge Harper and appellate courts used this letter to sever/ terminate parent/ child relationship.

as "fact" solely upon Lofas's "Ph.D." – soon revealed as fake. Days earlier, a prior family court official, Judge Miniman, had stated:

> *"The child is not 18 months old. This is a 7 year old boy who's had a ... relationship with his dad for an extended period of time ... I don't get the concept of easing him in to overnights, frankly."*

Immediately, Judge Harper imposed in a summary support order "*no overnights*" and designated local "favorites" including a former law clerk **Scucci** and a local "psychologist", **Hagovsky**, to review the case, "see" the child and report "within 14 days":

Salvaggio	*[testifies] ... Lofas is a psychologist. ... I happen to know your Honor...that he [Dr. Hagovsky] is around...*
Judge Harper	*.... I agree with the psychologist [Lofas] that we work toward and phase-in ...[reads Lofas letter] to an overnight. I'm going to appoint ... Scucci ...["High 5" gesture by Salvaggio]. ... Yeah, we're not talking overnights until I can get someone to see the child ... ... [W]e'll call immediately ... ... [N]eed ... Dr. Hagovsky's help ... to get on it immediately. ...I'm going to get ... Dr. Hagovsky We'll get him appointed and notified immediately. ... [W]e can get a telephonic report ... So we don't have to wait for a written report -- ... something going here right way ... I'd like to get the telephonic report within 14 days. I want this. ....*

Upon the father's prompt revelation that Lofas secretly had traumatized the child ("*DTB's Discussion*") --again absent all hearing or other fair process -- immediately, Judge Harper secretly retracted the days-earlier "order" for these favorites to

perform. Thus, in violation of the August 24, 2000, order, interviews of the mother and child -- scheduled immediately by Salvaggio with Hagovsky for September 7-9, 2000 -- secretly were canceled by Salvaggio. On September 8, 2000, secretly, Judge Harper directed that Scucci attend, prejudicially excused Scucci's absence of performance, failed to direct any future performance, then – absent "track system" process, instead, another summary support order -- directed that the 2 designated appointments were "to continue":

Salvaggio *... I, have no relationship at all with ... [Scucci] ...I have never been affiliated with her in any way. I don't have personal relationship with her....[whispering by law clerk: "... [Scucci]'s on her way ... on her way ...] ... I think had said let's have telephone conference with ... [Hagovsky] ... I called him yesterday afternoon to make sure that he knew that we would need to, you know, put it off ...*

Scucci *Your Honor... I have not received a copy of the ... [appointment order].*

Harper,J. *That's right... Other than the fact that the order was signed, there has been no work to my knowledge that was required ... No, I didn't direct you at this point to take any action.*

Scucci *OK.*

Harper,J. *The Order was signed and that's as far as it's gone.*

Scucci *I'm going to give each of the parties my business card so that they have a way to contact me so that if your Honor does decide that you do wish me to become involved in this case ...*

Harper,J. *OK. Fine. ... [Scucci exits courtroom.]*

In consequence, during the period of the child's observed distress, *i.e.*, August 28, 2000 - September 8, 2000, Judge Harper assured that the designated GAL and psychologist – lauded just days earlier - did not intervene. Thereafter, for months – then years -- Judge Harper failed to enforce his own summary orders for mere Saturday or Sunday 10 a.m. – 6 p.m. calamitous (round trip) inter-state "association" between DTB's Chester, N.J., residence and his father's NYC home. Thereafter, absent any confidentiality protection for this then 8-year-old child (now 14) -- as mandated by the *Parentage Act*-- Judge Harper retained the case in chambers for 10 months. This violated the *Family Therapist Privilege* and case "track system". *See Kinsella v. Kinsella*, 150 N.J. 276, 696 A.2d 556 (1997), which addresses R. 510 (the "**Family Therapist Privilege**"), a rule grounded upon the Federal right of privacy: "*A communication between a ... family therapist and the person or persons in therapy shall be confidential and its secrecy preserved. This privilege shall not be subject to waiver ...*" *See Appendix to 04 -992 at App I.*[5]

In this manner, Judge Harper segregated this c..ld – one of unmarried parents – for treatment different and unequal to children of married parents. *See "Parenting Time: A Child's Right" – i.e., "A ... Right"* except for a child/ children of unmarried parents. *See Appendix to 04-992 at App J.*

The State provides different rules for a child/ children of unmarried parents as compared to a child/ children of

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[5] For example, "track systems" for a child (or children) of married parents – none for this child. Earlier, in July, 2000, Judge Harper ordered probation to conduct a "*best interests*" investigation. Upon Lofas's letter, Judge Harper replaced probation with a compliant former law clerk, Scucci: "*I will do whatever your Honor wants me to do*". Judge Harper failed to forward the order to probation or place the case on any "track". Thus, no investigation conducted until 2 years later by Dr. Monday.

married parents – and for the father of such child/ children. State provides summary treatment for a child/ children of unmarried parents (and father) and precludes any "track system" to such child/ children (or father). In consequence, all "track system" process, *e.g.*, parenting time ("visitation"), custody, mediation, discovery, trial dates, etc., are replaced/ were replaced with hand-written notation(s) upon form orders.

In this manner, differences are State-imposed in a discriminatory manner (bias and favoritism) which promotes an arbitrary and capricious – indeed, secret and standardless – accomplishment of severance/ termination of parent-child relationship. In consequence, the State has not satisfied the *heightened scrutiny* standard for such child/ children (and father) and has acted in violation of the Equal Protection Clause.

These cases address conflicts between Scucci, Salvaggio and their secret "of counsel" arrangement through a third Morristown attorney, Hart. On December 6, 2000, subsequent to 4 months of inaction by Scucci and Hagovsky – and the day after the NJ Appellate Division's (the "**AD**"'s) "No" to any prompt appeal grounded upon Judge Harper's misuse of Lofas – Scucci sent a secret, unsigned letter to Judge Harper and to Salvaggio (also telephoned) contending performance. Upon the December 8, 2000, production of Scucci's letter, there were revealed conflicts-of-interest with Salvaggio. Scucci had not accepted the GAL designated assignment, had not performed for 4 months, had not provided statutory "notice"/ monthly statements for services and had never communicated with the father. Nonetheless, Scucci fabricated an excuse: "...[He] didn't call me back". Through August 25–December 8, 2000, absent any "stay", neither the mother nor Salvaggio re-scheduled appointments with Hagovsky or Scucci -- and neither intervened. Thus, a timely

examination of the child during the period of distress caused by Lofas was avoided.[6]

Later, in mid-December, 2000, Judge Harper, Salvaggio, Scucci, and Hagovsky, together, pursued immediate interviews and prompt reports under threat for sanctions, dismissal of the complaint and extinguishment of all "visitation" – *de facto* which already had been accomplished. Meanwhile, inhumane 10 a.m. – 6 p.m. interstate bi-weekly Saturday/ or Sunday "association" continued during these 4 months – and as events developed through AD disinterest – for an additional 2 years.[7]

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[6] Purportedly, Scucci briefly interviewed the child (then, 8) on October 8, 2000. Thereafter, Scucci did nothing for 2 months notwithstanding the August 30, 2000, designation order: " ... *shall interview the parties and the child*". An additional 2 months later, *i.e.*, on December 8, 2000 -- 4 months after the designation -- the next court proceeding was held, *i.e.*, just (i) 1 day after Scucci's false "*He didn't call me back*" excuse, and (ii) 3 days after the AD's summary denial of any appeal upon use of the Lofas letter in violation of the *Family Therapist Privilege*. At the December 8, 2000, proceeding, for the first time it was revealed that Hagovsky had not performed for 4 months.

Judge Harper and Scucci were engaged in joint action to conceal Scucci's non-performance while Judge Harper awaited (eventual, *i.e.*, December 4, 2000) summary approval for violation/ avoidance of *Family Therapist Privilege* concerning a child of unmarried parents. Judge Harper assured that Scucci never would testify, never appear in court, never be deposed, and never produce any telephone or other records – nor would anyone else. Scucci's failure to provide R. 5:8B written notice/ monthly statements facilitated this plan.

Where was the *Advisory Committee on Judicial Conduct* (the "**ACJC**") upon these facts? Why has the AD twice not addressed any of these facts?

[7] The "phase-in" could be accomplished (i) only via Staten Island Expressway, I-95, I-78 [or, Brooklyn-Queens Expressway, Manhattan streets, GW Bridge, I-80], N.J. 206, then rural Chester, NJ roads – at best 90 minutes each way upon unpredictably congested roads -- by a then 8-10 year old child – (ii) in order 2 times monthly to have "association" for less

On December 29, 2000, for the first time, Salvaggio wrote to Hagovsky enclosing copies of orders upon which Salvaggio provided "excuse" for the many-month injurious absence of any performance:

> *[T]his week, you requested that I fax you the Orders ... your appointment... "see the child" and "report...within 14 days". However, the process did not go forward, because...[father]... application...[for]...[stay]...*

The father filed a grievance with the ACJC. On February 2, 2001, the father sought disqualification of Scucci, Salvaggio, and Hagovsky upon conflicts/ improprieties and injurious non-performance for 4 months. Notwithstanding that the father's late-December, 2000, "*reconsideration submissions*" and disqualification motion presented for the first time (i) secreted conflicts-of-interest, (ii) objection to Salvaggio's direction to Hagovsky not to perform and failure to perform for 4 months, (iii) objection to Scucci's failure to satisfy R.5:8B notice/ statements, fabricated "*no call back*" excuse and request for telephone records and court appearance, and (iv) observed increasing distress in the child, Judge Harper avoided accountability for himself and his friends by dismissing the complaint for "paternity and visitation" *without prejudice* -- and "relieving of duties" these culpable regulars, Scucci and Hagovsky (also, implicitly, Salvaggio). In March, 2001, Judge Harper rewarded

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than 6-8 hours with an 8-year previously always-involved father and (iii) as imposed for nearly 2 years, severed and terminated the Federal right to parent-child relationship.

This was imposed upon child and father solely grounded upon Salvaggio's August 25, 2000, submission of Lofas' letter – *i.e.*, absent all discovery, hearing, trial or other evidence – excepting Scucci's "*Did not call me back*" December 8, 2000, concocted and unexamined excuse.

Salvaggio with a $10,000 order for attorneys' fees.[8]

In order to promote any "association", in mid-2002, the father moved to northeast Pennsylvania. However, upon an unamended birth certificate, the mother enrolled the child in a 24/7 Princeton, NJ boarding school, *American Boychoir*. Upon the child's August, 2002-observed distress, Dr. Monday -- State-appointed – conducted lengthy interviews and recommended: *no boarding school/ immediate therapeutic counseling/greatly increased father-son association*.

Concurrently, the mother's new counsel, Einhorn, Harris, *et al.* ("**Einhorn**"), a politically influential firm, sought to establish "relocation" through Princeton area cohabitation with a male stranger landlord. Judge Rand withdrew authorization for enrollment. Einhorn sought emergent relief in the AD to compel DTB's enrollment in this troubled school.[9] Notwithstanding that Dr. Monday's report was known to be imminent, the AD did not wait. Within 48 hours (on *September 11, 2002*) absent all plenary or other hearing,

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[8] During the lengthy period, *August, 2000 – April, 2002*, the mother failed on at least 28 Saturdays/ Sundays to provide even the 6-8 hour no-overnight (twice) per month inter-state "association" authorized.

From the September 11, 2001 attack on our nation at the *World Trade Center* through April, 2002, there occurred an absence of all "association": Judge Harper had authorized solely (dangerous) "exchanges" at the father's Dey Street, NYC, office located ½ block from the disaster site, or at Penn Station (NYC).

Upon the attack, the mother refused any "association" except "exchanges" at these 2 locations. Notwithstanding early October, 2001, "appeal", nearly 60 days later, *i.e.*, on November 29, 2001 (earlier, Judge Rand, a 2nd official, on November 7, 2001), the AD summarily validated these bizarre and dangerous "exchanges". In consequence, no association occurred between a (then) nearly 60-year old father and only child for 6 months during this national tragedy.

[9] *See New York Times* and *Nightline*, both April 16, 2002 re: long-term effects of sexual abuse to boys who had attended *American Boychoir*.

instead, "*emergent order*", reinstated authorization for enrollment -- and the child was enrolled.[10]

Subsequent to nearly 18 months of injurious delay of the father's appeal, oral argument before the AD was held on October 2, 2002. The judges present expressed shock that any "overnight" association ever had occurred during the nearly three (3)-year proceedings. In *Opinion I*, dated October 29, 2002, the AD recited *verbatim* virtually every word of Judge Harper's dismissal, affirmed all of Judge Harper's conduct and remanded the matter to Judge Rand for analysis/ consideration of any "overnights" -- eradicated since August, 2000. *Opinion I* conceals the misconduct and maladministration of the family court case as administered by Judge Harper and avoids mention/ consequence of the *Family Therapist Privilege*.

Subsequent to a December, 2002, filing of 02-cv-5791, Judge Rand issued an "*order to show cause*" for sanctions against the father grounded upon the commencement of such Federal action.[11] At a proceeding held January 15, 2003, Judge Rand – upon conceded absence of jurisdiction -- denied the father any statement, rather, encouraged Einhorn to participate in the "sanctions" and defamation proceeding.[12]

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[10] Such "relocation" resulted in at least a 90 miles one-way commute between child and father, *i.e.*, encompassed at least 5 hours of dangerous round trip commutation through central N.J. Together with *American Boychoir*'s incompatible "excursions/ tours", this accomplished a prohibitive, unexamined "move-away".

[11] *Inter alia*, 02-cv-5791 sought a declaration that the family court's use of Montgomery as a "*parenting coordinator*" – as absent legislative authority – was improper. Montgomery was the therapist in *Kinsella* and an Einhorn-imposed favorite. *See Kinsella*, *supra*, 150 N.J. 276 (1997).

[12] Judge Rand made these statements before a large audience:

- *When I heard that you had sued Montgomery, I was going to direct that you dismiss that case in 15 minutes -- or go to jail;*

Upon the boarding school appeal, in May, 2003, Einhorn delivered to the AD the 02-cv-5791 pleadings brought on behalf of DTB by the father against the State judiciary. At oral argument, repeatedly, Einhorn argued that such Federal pleadings be discredited and the father punished.

In response, the AD (same authors) issued *Opinion II* dated July 1, 2003 – which in contradiction to *Opinion I*'s analysis -- for the first time identified that purportedly "*sole custody*" was "*vested*" in the mother by Judge Harper's orders "*during the period July 28, 2000 – June 28, 2001*". Nonetheless, no such order(s) exists.[13] Respectfully, this is a contrivance so as to confer legitimacy upon the (nearly year-

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- *Next, I considered writing to the New York legal professional associations in order to attack your character and integrity;" I relieve Montgomery;*
- *You are ... [false accusation of a "loathsome disease"];*
- *All association with the minor child DTB is suspended, temporary sole physical and legal custody to the defendant-mother to/ until Plaintiff-father pro se discredits Dr. Monday's evaluation and discredits under oath in the family court the merits of the pending Federal civil rights cases;*
- *Provides monetary reward to Einhorn and praises Montgomery, a local "regular".*

[13] Neither the *orders* identified (nor any other Judge Harper order(s)) evidence any such adjudication, as no order, decree, writ, or judgment "vests" "sole custody" in the mother – or in either parent.

Rather, in contradiction, the undisputed record presented to the AD concerning the then 8-11-year-old child evidenced an 8-year continuous *joint parenting relationship*, notably including even Judge Harper's (and in August, 2002, Judge Rand's) acknowledgment of such relationship in "*Findings*" dated December 13, 2000, *viz.*: "... *[mother] will remain temporary physical custodian of ... [DTB] ... while the parties remain joint legal custodians* ...."

In the lengthy *Opinion I*, the AD accepted this legal status and did not -- in *Opinion I* -- further address the subject or change such status.

earlier) AD-issued "*emergent order*" for enrollment. Further, as requested by Einhorn, the AD sought to discredit Federal pleadings and the father's (attorney's) standing for the child. Thus, the AD's *Opinion II* seeks to:

- prejudice the father's standing to represent DTB in Federal cases;
- avoid *Mackowski v Mackowski*, 317 N.J. Super. 8 (AD 1998) precedent which mandates "*... a plenary hearing ... required prior to effecting any change in the custodial relationship*" (*e.g.*, visitation);
- posit (untrue) *Rooker-Feldman* final judgment; and
- (unfairly) validate the *emergent* approval of boarding school enrollment, notwithstanding Dr. Monday's evaluation (omitted in *Opinion II*) that such enrollment would be detrimental to DTB.

In this manner, *Opinion II* seeks to excuse the absence of any hearing, evidence, or due process relating to the AD's earlier *emergent order* – at Einhorn's request -- for the child's next day enrollment in *American Boychoir* and "*stay*" of Dr. Monday's recommendation for "*immediate therapeutic counseling*". In reality, *Opinion II* accomplished a *de facto* illegal "move-away" with knowledge that such extinguished effectively all father-child relationship as well as promoted/ concealed continuing alienation of child from father.

Three (3) years ago, *Opinion II* continued the concealment of misconduct. Instead, these AD officials directed that upon another remand, Judge Dangler conduct "*plenary hearing(s)*" on *boarding school enrollment* and any possible father rights to any form of "*custody*". Notwithstanding the father's prompt motions and appeals – for nearly 2 more years -- Judge Dangler refused to accomplish

any of *Opinion II*'s directions.[14] The ACJC never responded to multiple filed grievances. Repeatedly, the AD (same authors) failed to enforce their own *Opinion II* directions -- ("*...expeditiously managed ... tight time-frames ... plenary hearing(s)*").

After 4 years' enrollment, the child graduated from *American Boychoir* in June, 2006. During this lengthy period, neither the AD nor Judge Rand nor (3rd official) Judge Dangler nor (4th official) Judge McCarthy nor any other judicial official ever conducted any hearing(s) – plenary or otherwise – *e.g.*, so as to satisfy *Mackowski* standards for change from "*joint legal custodians*" to "*sole custody*". Likewise, notwithstanding ordered 3 years ago, there has not ever occurred any hearing(s) -- plenary or otherwise -- relating to the boarding school -- a sad subject now overcome by events, as intended wrongfully by the State judiciary.

Notwithstanding that NJ courts imposed inhumane 10 a.m.-6 p.m. few-hour "association" for nearly 3 years grounded solely upon submission by Salvaggio and use by Judge Harper of the unexamined Lofas letter from a bogus "Ph.D", Connecticut exposed this fake in a lengthy "***CEASE AND DESIST ORDER***" in March, 2003. However, the AD (same authors) declined to docket such Cease/Desist Order into any appellate record.

Respectfully, this case has been marked for six (6) years by the presence of well-documented judicial misconduct and maladministration in order to position a wrongful severance/ termination of father-child relationship. In fact, the State judiciary has failed to do anything for the child.[15]

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[14] Instead, this official authorized the child's *American Boychoir* "*bus tour*" to a former Soviet bloc country just weeks after *Beslan* notwithstanding the father's objection grounded upon terrorist risk.

[15] Scucci – "*order signed*", nothing happens, nothing required.

Instead, three (3) additional NJ judges have continued for three (3) more years the outrageous misconduct concerning this child of unmarried parents as identified in certifications provided for 6 years to the district court. Will another many-year "appeal" to the AD be of any benefit to this child, 8 years old at the start of proceedings and now 14? Regrettably, this case is administered by such judiciary as "*telephone justice*" – a mere pretense for "best interests" of children.[16]

Through unequal treatment/ violation of due process, NJ judges have injured a child of unmarried parents and the child's previously always-involved father. This has resulted in a now more than 6-year wrongful severance/ termination of parent-child relationship -- which continues.

REASONS FOR GRANTING THE WRIT

A. No *Rooker--Feldman* Bar: Separate But Not Equal.

The State Respondents improperly filed papers which remain prejudicial:

- in a *Brief in Opposition* to this Court dated May 18, 2005, upon the first *Petition for Writ of Certiorari*, these Respondents included – and argued in reliance upon -- an

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Hagovsky – "*order signed*", nothing happens, nothing required.
Judge Dangler -- do nothing -- for two (2) years, nothing required.
This, the policy of the State: "*different treatment*" in unmarried cases -- just a "*summary support order*". Then, nothing....

No track – no accountability. This is not a recognizable "legal system" under our Constitution or our history.

Not once did Judge Dangler or Judge McCarthy ask: "*How's the child doing?*" Not once.

[16] This approach is reflected in the words of the Attorney General's office: "*... only the Supreme Court of the United States can review our Morristown ... Judge Harper, and the conduct of his 'friends'*".

Appendix which contained AD *Opinion I* and *Opinion II*. However, these materials had not been filed or considered by the Federal district court or the Circuit court[17], all in violation of *Supreme Court* Rule 15; and

- in response to the Circuit clerk's order relating to "*scope of ... appeal*" dated October 21, 2005, the father identified *ITT Corporation v. Intelnet International Corporation*, 366 F. 3rd 205 (3rd Cir. 2004), dated April 26, 2004, *i.e.*, earlier precedent that dismissal as a "*sanction*" is not a *Rooker-Feldman* jurisdictional bar.

The district court and Circuit court have relied upon *Rooker -Feldman* to bar all relief. However, *Exxon Mobil Corporation v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), identified an always limited application. Respectfully, this limited application is/ remains exactly in the same manner and to the same effect as Petitioners have presented for many years. Inhumane conduct should not be overlooked because some Respondents are judicial officials. A *double standard* should not apply in a Federal action where jurisdiction plainly exists. Here, a *Rooker-Feldman* bar does not exist – and has not ever existed. Reliance upon such bar presupposes a final order/ judgment *on the merits*. *See Whiteford v. Reed*, 155 F. 3rd 671, 674 (3rd Cir. 1998) (no bar to claim that had been rejected on procedural grounds). Regrettably, there has been a denial of due process in a meritorious case. The identified orders/ judgment(s) are void. Relief may be granted where the court acted in some manner inconsistent with due process. *See Callon Petroleum Co. v. Frontier Ins. Co.*, 351 F.3rd 204, 208 (5thCir. 2003); *United States v. Boch Oldsmobile, Inc.*, 909 F.

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[17] Upon denial of R. 60 (b) relief, and a second appeal, the State filed these same *Opinions I and II* for the first time to the Circuit as a *Supplemental Appendix*. Notwithstanding objection as not filed in the district or Circuit courts, the Circuit authorized the *Supplemental Appendix*. *See App B*.

2nd 657, 661, *et seq.* (1st Cir. 1990). Petitioners continue to experience actual injury under circumstances beyond their control. *See Lehman v. United States*, 154 F. 3rd 1010, 1017 (9th Cir. 1998); *see also, Coltec Indus., Inc. v. Hobgood*, 280 F.3rd 262, 271-72 (3rd Cir. 2002).

In C.A. No. 03-4259, the Circuit affirmed solely upon *Rooker-Feldman* by opinion dated September 14, 2004.

Notwithstanding a nearly 6-month earlier April 26, 2004, precedential opinion, *ITT Corporation*, on identical issue, *i.e.*, No *Rooker-Feldman* bar upon "*dismissal as a sanction*", in the first appeal, C.A. No. 03-4259, the Circuit did not mention *ITT Corporation*'s preclusion of *Rooker-Feldman*. Instead, unfairly, the Circuit applied said erroneous *Rooker-Feldman* bar against the father and child.

Upon a second appeal, C.A. 05-4565, the Circuit by opinion dated June 29, 2006, again declined to provide remedy – again upon *Rooker-Feldman* bar and again absent reference to *ITT Corporation*.

The first Circuit opinion dated September 14, 2004, addresses *Rooker-Feldman* prior to *Exxon Mobil*. Respectfully, this was an erroneous reliance. *Exxon Mobil* supports the Petitioners' motion for R. 60 (b) relief, *e.g.*, upon void judgment. There is absent in the both Circuit opinions any mention of the Circuit's earlier precedential decision in *ITT Corporation* in which the Circuit identified absence of *Rooker-Feldman* "finality" to any NJ court "*dismissal ... not on the merits*".

Here, *ITT Corporation* prevented *Rooker-Feldman* application to this case. In multiple footnotes upon analysis and citation to R. 4:37-2(a) in an opinion filed April 26, 2004, the Circuit in *ITT Corporation* conclusively determined an absence of *Rooker-Feldman* bar to a *dismissal not on the merits, i.e., as a sanction*. Thus, what Judge Harper and the AD accomplished was several years of inhumane 10-6 inter-

state association concerning a then 8-10-year old child with knowledge that NJ's own rules/ legal precedents precluded any *Rooker-Feldman* defense – nonetheless, one made to the district court and to the Circuit and to this Court for years.

The Petitioners advised the Circuit by letter dated November 3, 2005, that *ITT Corporation* precluded *Rooker-Feldman* bar. Nonetheless, in the Circuit opinion dated June 29, 2006, the Circuit failed to identify that such "legal argument" upon *ITT Corporation* timely had been made. *See* Circuit opinion, dated June 29, 2006, n., *App. B.*

Upon the father's *reconsideration submissions* in December, 2000 – January, 2001, revealing and documenting Judge Harper's misconduct and maladministration, instead of correction, Judge Harper devised a plan and scheme to conceal his own misconduct and that of his friends, Salvaggio, Scucci, and Hagovsky. This plan and scheme included a "dismissal of complaint" *without prejudice*, *i.e.*, not on the merits. Respectfully, this was not an adjudication of anything under *Rooker-Feldman*. Rather, this was Judge Harper's mechanism for obtaining the imposition of inhumane "visitation" for as many years as possible. In this manner, Judge Harper sought to obtain the AD's assistance upon an appeal while 10 a.m. – 6 p.m. inter-state "association" destroyed any possible father-child relationship. In this, the AD assisted, *e.g.*, upon denial of numerous meritorious motions to *expedite the appeal*, *date certain for appeal*, and other applications for timely resolution.

Thereafter for more than 2 years, Judge Harper and the AD mistreated the child and father. This occurred because the father through use of the State's own records/recordings had exposed Judge Harper to have positioned a child of unmarried parents into a fatherless life. In consequence, the State judiciary unfairly treated the case adversely against the father – and child. This occurred and continues notwithstanding documented as contrary to the facts and the law.

Numerous NJ appellate court judges consistently denied every application to conclude the appeal proceedings in less than 2 years. In consequence, an inhumane 10 a.m. – 6 p.m. inter-state "association" was maintained by appellate court judges who acted in accordance with an agenda to protect Judge Harper and conceal misconduct, no matter the known and adverse consequence to child, then age 8-10. These wrongs violated both the plaintiff-father's and child's civil rights and as concealed by the appellate court for years severed and terminated the parent-child relationship which had existed for eight (8) years.

NJ's system includes an agenda so to sever/ terminate, *e.g.*, through omitted/ unfair/ delayed court proceedings and upon unequal treatment of similarly situated children. This system is grounded upon an agenda to separate unmarried fathers from their children. *Exxon-Mobil* teaches that there may not exist a *Rooker-Feldman* double standard. Instead of equal treatment for child and father, *e.g.*, prompt mediation, parenting plan, custody trial, and the multitude of other rights guaranteed to married parents and children of married parents, the State judiciary overtly and for many years have treated differently and adversely this child and this father.

Essentially, this has occurred because in cases relating to such parties, in the view of the State, such wrongs to child and father are insignificant compared to the consequences to a family court judge upon exposure of such misconduct. This case is and always has been a "career" case, never a *Rooker-Feldman* case. Regrettably, to date, those who have reviewed this case have chosen to give Judge Harper a pass. In our society, however, a judge who is so exposed for such calculated mistreatment of a child and father should not any longer be protected. Respectfully, *Exxon Mobil* and *ITT Corporation* provide Federal jurisdiction for Petitioners' claims. These claims should proceed as in any other non-*Rooker-Feldman*-barred case. If not, then an unidentified double standard exists and the doctrine's "*resting place*"

remains premature for some of our children. *See Marshall v. Marshall*, 04-1544, -- U.S. – (May 1, 2006).[18]

Judge Harper's February 6, 2001 order was "*without prejudice*" pursuant to Rule. 4:37-2 (a). Thus, under invariable State precedent, there has not occurred any adjudication on the merits. Nonetheless, unlike a child of married parents – and notwithstanding the child's obvious anguish, distress and trauma – after more than 6 years in NJ's family court system, this is where this child is:

- No "parenting plan";
- No visitation schedule; no "Wednesdays" -- ever;
- No direction for any "therapist" to assist DTB – urgently or otherwise;
- No Holiday schedule – none for 10 years;
- No "exchange" arrangements at any place/time/manner;
- No sealing of the family court case -- which identifies a child of unmarried parents – contrary to *Parentage Act*;
- No "custody" trial within 90 days – or ever;
- No mediation assistance;
- No disclosure;
- No evidentiary hearing;
- No amendment to DTB's birth certificate – ordered more than 6 years ago; and
- No *Opinion II "plenary hearing(s)"*[5] -- ordered 3 years ago.

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[18] In a *Marshall* concurrence, -- U.S. --, Justice Stevens stated:

> *Rather than preserving whatever vitality that the [other] "exception" has retained ...,*
> *I would provide the creature with a decent burial in a grave adjacent to the resting place of the Rooker-Feldman doctrine.*

Inexcusably, after a previously always-involved father entered the NJ system so as to preserve a loving 8-year father-son relationship, through misconduct, maladministration, and a misguided State agenda, wrongfully, there has resulted a severance/ termination of parent-child relationship. Indeed, between this parent and this child, "association" intentionally and inexcusably has been eradicated:

- 2000 – 20 days (no overnights) (Judge Harper);
- 2001 – 10 days (no overnights) (Judge Harper);
- 2002 – 15 days (Judge Rand);
- 2003 – 1 day (Judge Rand/ Judge Dangler);
- 2004 – 25 days, ending in mid-August (Judge Dangler)
- 2005 – 0 days (Judge Dangler);
- 2006 – 0 days (Judge McCarthy).

As addressed in a *Motion upon Recent Events*, on June 1, 2006, Judge McCarthy – concerned about the exposure of Morristown judges to Federal review -- conducted an abusive proceeding, including unprovoked cursing, screaming and violent threats against the father, and issued an order[19] which wrongfully seeks to:

- interfere with pending Federal proceedings against the State Respondents;

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[19] "*Defendant [-mother] is directed to write a letter to the Court outlining plaintiff's repeated abuse of the court system in New Jersey and New York. .... Upon receipt of this letter, the Court will forward this information to, inter alia, the First Department in New York State along with the Court's recommendation that it review plaintiff's fitness to hold a license to practice law in the State of New York.*"

- interfere with the Petitioner's ability to represent the child in this and other Federal proceedings;
- discredit meritorious Federal claims in NJ and NY;
- discredit the father as an attorney in said proceedings;
- promote resurrection of fraudulent "*malicious prosecution*" and "*$500,000 punitive damages*" claims grounded upon the abuses/ unconstitutional practices in the NJ family court -- commenced against the father 4/2003 -- dismissed as meritless 1/2006.

Since the previously always-involved father's mid-June, 2000, commencement of family court action for preservation of parent-child relationship, relentlessly for more than 6 years, the State judiciary together with local "friends" have acted in violation of our Constitution. This has occurred so as to conceal the misconduct and maladministration at the core of family court proceedings, AD avoidance, and ACJC disinterest. Sadly, since mid-2000, the State has accomplished irrevocable injury to the minor child's psyche and well-being, indeed, has destroyed in a fundamental manner the child's entire childhood. This has been accomplished and continues upon false excuses and irresponsible rulings – anything but reveal the misconduct and maladministration at the center of the family court "process". For such a child – and father – the State system literally does not operate.

For no legitimate reason, the State judiciary shattered this child's 8-year continuity of loving relationship with his previously always-involved, now 62-year old father. The destruction for more than 6 years of this child's "happiness and welfare" never were considered.

For such lengthy time, not only has there been severed/ terminated an 8-year parent-child relationship, but also the State gratuitously has driven this child into life-long trauma. Inhumanely, the State has protected its own culpable adult personnel at the expense of an 8-14-year-old defenseless child.

See generally, Carchman v. Korman Corp., 594 F.2nd 354, 356 (3rd Cir. 1979); *Pearson v. Miller*, 988 F. Supp. 848 (M.D. Pa. 1997).

B. No Performance: No Immunity

As the Circuit opinion places incorrect reliance upon *Rooker-Feldman*, the facts/ issues relating to Hagovsky's, Scucci's and Salvaggio's joint violations of Petitioners' civil rights remain unaddressed. Hagovsky's entire nonperformance in wrongful joint conduct with other Respondents does not support the immunity identified in *Hughes v. Long*, 242 F. 3d 121 (3d Cir. 2001) ("*Hughes II*").

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted and the judgment below reversed.

DATED: New York, New York
August 30, 2006

Respectfully submitted,
Daniel J. O'Callaghan
Petitioner Pro Se and
Counsel of Record and
Attorney for Petitioner DTB
c/o Daniel J. O'Callaghan, Esq.
7 Dey Street, Suite 700
New York, New York 10007
(212) 222-4200

APPENDICES

APPENDIX A – ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY DATED SEPTEMBER 12, 2005

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

D.T.B., a minor child, by his next friend, DANIEL J. O'CALLGHAN,	:	Civil Action No. 01-630 (JAG)
Plaintiffs,	:	
v.	:	**ORDER**
HON. JOHN J. FARMER, JR., *et al.*,	:	
Defendants.	:	

GREENAWAY, JR., U.S.D.J.

This matter comes before the Court on the motion of Plaintiffs for FED. R. CIV. P. 60 (b) relief; and it appearing that Exxon Mobil v. Saudi Basic Industries, 125 S.Ct. 1517 (2005) does not render any of this Court's judgments void; and good cause appearing,

IT IS on this 12th day of September 2005,

ORDERED that the motion of Plaintiffs for FED. R. CIV. P. 60 (b) relief is DENIED; and it is further

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of this Order.

S/ Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR., U.S.D.J.

APPENDIX B – ORDER OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED APRIL 24, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

April 24, 2006

No. 05-4565

D.T.B., etc,

Appellants

V.

HON. JOHN J. FARMER, etc., et al.

Present: **Barry, Van Antwerpen and Gibson***, Circuit Judges

1. Motion by Appellees, John Farmer and John J. Harper, for Leave to File a Supplemental Appendix construed as Motion to Supplement the Record
2. Motion by Appellants to Strike Brief and Supplemental Appendix of Appellees, John Farmer and John J. Harper
3. Opposition to Motion to file Supplemental Appendix by Appellants…

Briefing Specialist/ Court Crier

Calendared: 6/29/06

*Sitting by Designation: **Honorable John R. Gibson**, USCA for the 8th Circuit

ORDER

The foregoing motion by appellees to supplement the record is GRANTED; the motion by appellants to strike the brief and supplemental appendix of appellees is DENIED.

By the Court,
/s/ Maryanne Trump Barry
Circuit Judge

Dated: June 6, 2006…

APPENDIX C – OPINION OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 29, 2006

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4565

D.T.B., a minor child, by his next friend DANIEL J. O'CALLAGHAN; DANIEL J. O'CALLAGHAN,

Appellants

v.

HON. JOHN J. FARMER, JR. In past or present official capacity as Attorney General of the State of New Jersey; HON. JOHN J. HARPER, in his past or present official capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 01-cv-00630)
District Judge: Honorable Joseph A. Greenaway, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 29, 2006

Before: BARRY, VAN ANTWERPEN, and JOHN R. GIBSON,* Circuit Judges.

(Filed June 29, 2006)

OPINION

PER CURIAM

Appellants Daniel O'Callaghan and his son D.T.B. challenge the refusal of the District Court to vacate several 2001 and 2003 judgments pursuant to Fed.R.Civ.P. 60 (b). We have jurisdiction pursuant to 28 U.S.C. § 1291, and will affirm for the reasons set forth below.

Because we write solely for the benefit of the parties, we state the facts only as they pertain to our analysis. This Court upheld on September 14, 2004, the District Court's entry of various orders dismissing Appellants' claims versus a New Jersey family court judge, the New Jersey Attorney General, a court-appointed *guardian ad litem* and psychologist, and the family court lawyer formerly representing D.T.B.'s mother. *D.T.B. v. Farmer*, 114 Fed. Appx. 446 (3d Cir. 2004) (per curiam).

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*Honorable John R. Gibson, United States Circuit Judge for the Eight Circuit, sitting by designation.

We affirmed the District Court's conclusion that Appellants' claims were barred by, *inter alia*, the *Rooker-Feldman* doctrine and absolute immunity. The Supreme Court denied Appellants' Petition for Ceriorari on June 20, 2005. *D.T.B. v. Farmer*, 73 U.S.L.W. 3733 (U.S. June 20, 2005).

Appellants then filed, in the District of New Jersey on July 12, 2005, a Motion to Vacate the District Court's previous Orders pursuant to Fed.R.Civ.P. 60 (b). The District Court denied this motion on September 12, 2005.

We review a District Court's denial of a Rule 60(b) motion for abuse of discretion.[1] *Brown v. Phila Hous. Auth.*, 350 F.3d 338, 342 (3d Cir. 2003). We will reverse only if the District Court's decision "rests upon a clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact." *Hanover Potato Prods., Inc. v. Shalala*, 989 F.2d 123, 127 (3d Cir. 1993). We will not disturb the District Court's exercise of discretion absent a "definite and firm conviction that the court below committed a clear error of judgment." *Id.* (quotation marks and citation omitted). Such Rule 60(b) motions may be granted only upon a showing that the underlying judgment is, e.g., "void," if it is "no longer equitable that the judgment should have prospective application," or for "any other reason justifying relief from the operation of the judgment." Fed.R.Civ.P. 60(b)(4)-(6). After careful consideration of the Appellants' arguments, we cannot conclude that the District Court abused its discretion in denying the motion to vacate.

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[1] On October 21, 2005, this Court ordered the parties to address whether our current review should be limited to the District Court's denial of the Rule 60(b) motion to vacate, in light of our previous affirmance of the District Court's underlying judgments. As Appellants have presented no meritorious *legal* argument against such limiting, and in light of the Supreme Court's refusal to review this Court's previous decision, we will so limit our current review.

We concur that *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (U.S. 2005), did not render the underlying judgments void.

For the foregoing reasons, we will affirm the District Court below. We will also deny Appellants' Motion Upon Recent Events.

APPENDIX D – JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 29, 2006

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4565

D.T.B., a minor child, by his next friend,
DANIEL J. O'CALLAGHAN; DANIEL J. O'CALLAGHAN,
Appellants

v.

HON. JOHN J. FARMER, JR., in past or present official capacity as Attorney General of the State of New Jersey; HON. JOHN J. HARPER, in his past or present official capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

On Appeal from the United States District Court for the District of New Jersey
(D.C. Civil No. 01-cv-00630)
District Judge: Honorable Joseph A. Greenaway, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 29, 2006

Before: BARRY, VAN ANTWERPEN, and GIBSON,*
Circuit Judges

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*Honorable John R. Gibson, United States Circuit Judge for the Eight Circuit, sitting by designation.

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on June 29, 2006, on consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the order of the District Court dated September 12, 2005, is hereby AFFIRMED. Appellants' Motion Upon Recent Events is hereby DENIED. Costs taxed against Appellants.

All of the above in accordance with the opinion of this Court.

Attest:

/s/ Marcia M. Waldron
Clerk

DATED: June 29, 2006

Certified as a true copy and issued in lieu of a formal mandate on 8/2/06

Teste: /s/ Marcia M. Waldron

Clerk, U.S. Court of Appeals for the Third Circuit

APPENDIX E – DECISION OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC DATED JULY 25, 2006

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4565

D.T.B., a minor child, by his next friend,
DANIEL J. O'CALLAGHAN; DANIEL J. O'CALLAGHAN,
Appellants

v.

HON. JOHN J. FARMER, JR., in past or present official capacity as Attorney General of the State of New Jersey; HON. JOHN J. HARPER, in his past or present official capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

On Appeal from the United States District Court for the District of New Jersey
(D.C. Civil No. 01-cv-00630)
District Judge: Honorable Joseph A. Greenaway, Jr.

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, VAN ANTWERPEN, CHAGARES and JOHN R. GIBSON*, Circuit Judges

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SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

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*Honorable John R. Gibson, United States Circuit Judge for the Eight Circuit, vote limited to panel rehearing only.

The petition for rehearing filed by *pro se* Appellant having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court, *en banc*, the petition for rehearing is hereby denied.

By the Court,

/s/ *Franklin S. Van Antwerpen*
Circuit Judge

Dated: July 25, 2006

PAR/CH/cc: Daniel J. O'Callaghan, Esq.
Diane M. Lamb, Esq.
Matthew Sapienza, Esq.
Michael S. Schwartz, Esq.

APPENDIX F– OPINION OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED SEPTEMBER 14, 2004

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

D.T.B., a minor child, by his next friend,
Daniel J. O'Callaghan; DANIEL J. O'CALLAGHAN,
Appellants

v.

JOHN J. FARMER, Hon., in his past or present official capacity as Attorney General of the State of New Jersey; JOHN J. HARPER, Hon., in his past or present capacity as Justice of the Superior Court of New Jersey, Chancery Division, Family Part; DAVID F. SALVAGGIO; MATHIAS R. HAGOVSKY; ANN T. SCUCCI

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(No. 01-cv-00630)
Hon. Joseph A. Greenaway, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 16, 2004

Before: ALITO and SMITH, Circuit Judges, and DUBOIS, District Judge*
(Opinion Filed: September 14, 2004)

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*Hon. Jan E. DuBois, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

OPINION OF THE COURT

PER CURIAM:

This appeal stems from litigation in the New Jersey Superior Court, Family Part. Plaintiff Daniel J. O'Callaghan filed a paternity, custody, and / or visitation action against V.R.B., the mother of O'Callaghan's minor son. Defendant Judge Harper presided over the case and terminated O'Callaghan's overnight visitation rights. After O'Callaghan failed to obtain interlocutory relief in the Appellate Division and the New Jersey Supreme Court, he filed a complaint against Judge Harper with the State Advisory Committee on Judicial Conduct, but this also proved unsuccessful. Judge Harper eventually dismissed O'Callaghan's complaint and imposed sanctions for procedural violations. O'Callaghan then made additional efforts to obtain appellate review in the New Jersey courts.

Greatly dissatisfied with the state court litigation, O'Callaghan subsequently filed this action in federal court asserting numerous federal constitutional and statutory claims against the judge, the former state attorney general, a court appointed psychologist, and others. The District Court dismissed the plaintiffs' claims against the judge and former attorney general pursuant to the Rooker-Feldman doctrine and issued a detailed opinion explaining the basis of its decision. For essentially the reasons stated in that opinion, we hold that these claims were properly dismissed. We appreciate the importance of O'Callaghan's concerns, but the claims asserted in the present federal action are inextricably intertwined with the state court decisions, and the lower federal courts accordingly lack jurisdiction to entertain those claims.

The District Court granted summary judgment in favor of the court-appointed psychologist, holding that she was entitled to absolute immunity under Hughes v. Long, 242 F.3d 121 (3d Cir. 2001). We agree with this ruling.

We have carefully considered all of the arguments advanced by the appellant but see no ground for reversing the District Court's disposition of any of the claims asserted against any of the defendants. Accordingly, the orders from which the appeal were taken are affirmed.

APPENDIX G – LETTER OF APPELLANTS TO CLERK, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED NOVEMBER 3, 2005

DANIEL J. O'CALLAGHAN
ATTORNEY AT LAW

...

November 3, 2005

...

Marcia M. Waldron, Clerk
United States Court of Appeals
For the Third Circuit

...

Re: *D.T.B., et al. v. Farmer, et al.*
United States Court of Appeals, Third Circuit
No. 05-4565

...

Dear Clerk Waldron:

In compliance with the Clerk's request relating to the "*scope of this* appeal" by Order dated October 21, 2005, Plaintiffs provide this written response....[Exhibits omitted]

The referenced Circuit Opinion *per curiam*, dated June 16, 2004 ...essentially addresses *Rooker-Feldman* prior to the Supreme Court of the United States' decision in *Exxon-Mobil Corporation v. Saudi Basic Industries Corp.*, 544 U.S. __ , 125 S.Ct. 1517 (2005). As addressed in the referenced letters to the Hon. Joseph A. Greenaway, Jr., (Ex ..., above), this was an erroneous reliance. *Exxon-Mobil* supports the Plaintiffs' motion for FRCP R. 60 (b) relief, *inter alia*, grounded upon void judgment.

As the Circuit Opinion *per* curiam stated an absence of subject matter jurisdiction, the pending appeal is Plaintiffs' only actual appeal -- whether characterized as *de novo* or otherwise.

Further in support of such relief, there is absent in the Circuit Opinion *per curiam* any mention of this same Court's precedential decision in *ITT Corporation v. Intelnet International Corporation*, 366 F. 3d 205 (3rd Cir. 2004). In *ITT Corporation*, this Court identified the absence of *Rooker-Feldman* "finality" to any New Jersey court disposition through a "*dismissal ... not on the merits*". Here, indisputably, *ITT Corporation* prevented *Rooker-Feldman* application to this case.

.... Accordingly, it is in the interests of justice that *de novo* review occur upon this pending appeal. ....

Also, in context of *Exxon-Mobil*, the Circuit Opinion *per curiam* should be reconsidered *de novo* concerning Defendant Hagovsky's reliance upon any absolute immunity defense. Certainly, this should occur in context of a judgment which remains void as in violation of Plaintiffs' due process. *See generally, United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661, *et seq.* (1st Cir. 1990). Here, Defendant Hagovsky's entire nonperformance in wrongful joint conduct with other Defendants does not support the immunity identified in *Hughes v. Long*, 242 F. 3d 121 (3d Cir. 2001)....

Thank you for your assistance.

Very truly yours,

Daniel J. O'Callaghan

cc: Defendants' Counsel